Sunset Beach Resort Sdn Bhd v Zakaria bin Ibrahim & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO K-02–294 OF 2011
ZALEHA ZAHARI, AZHAR MA'AH AND AZIAH ALI JJCA
11 JUNE 2012

B

Land Law — Malay reservations — Dealing contrary to Enactment — Whether agreement for tenancy of Malay Reserve Land for five-year term contravened Kedah Malay Reservations Enactment No 63 — Whether agreement void under Enactment

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The appellant entered into a tenancy agreement with the respondents for tenancy of the latter's Malay Reservation land for a five-year period with provision for the agreement to be extended for a further term of five years and thereafter for another term of 10 years. However, about two years after the agreement had been in force, the first respondent issued a notice to the appellant to vacate the land within one month on realising the appellant was not a 'Malay' company. The High Court, inter alia, granted the respondents a declaration that the tenancy agreement was void for contravening the Kedah Malay Reservations Enactment No 63 ('the Enactment'). In its appeal to the Court of Appeal against the decision, the appellant said there was nothing in s 9 of the Enactment that prohibited the leasing of Malay Reserve Land to a company. The relevant part of s 9 said that '*nothing in s 6 (of the Enactment) shall be deemed to prevent the leasing of Reservation land by a Malay to a person other than a Malay or by a Siamese to a person other than a Malay or a Siamese for a term not exceeding three years; provided that any document executed prior to or during the continuance of such term which purports to extend the term, whether by renewal of the lease or otherwise, beyond three years shall be void*'.

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Held, dismissing the appeal and affirming the decision of the High Court:

(1) The tenancy agreement which was for a period of five years contravened the clear and unambiguous words of s 9 of the Enactment. The transaction between the appellant and the respondents was prohibited by law. The High Court had not erred in granting the declaratory order that the tenancy agreement was void (see para 5).

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(2) The High Court had not erred in finding the appellant did not fall within the definition of 'Malay' under s 2 of the Enactment (see para 3).

I

[Bahasa Malaysia summary

Perayu memasuki perjanjian sewa dengan responden-responden bagi penyewaan tanah Rizab Melayu responden-responden untuk tempoh selama

lima tahun dengan peruntukan supaya perjanjian tersebut dilanjutkan untuk tempoh lima tahun lagi dan kemudiannya untuk terma 10 tahun lagi. Walau bagaimanapun, lebih kurang dua tahun selepas perjanjian dikuatkuasakan, responden pertama mengeluarkan notis kepada perayu untuk mengosongkan tanah dalam masa satu bulan selepas menyedari yang perayu bukan syarikat Melayu. Mahkamah Tinggi, antara lain, memberikan responden-responden perisytiharan bahawa perjanjian sewa tersebut adalah batal kerana bertentangan Enakmen Tanah Rizab Melayu Kedah No 63 ('Enakmen'). Dalam rayuannya kepada Mahkamah Rayuan terhadap keputusan tersebut, perayu menyatakan tidak terdapat apa-apa di dalam s 9 Enakmen melarang penyewaan Tanah Rizab Melayu kepada syarikat. Bahagian relevan s 9 menyatakan '*nothing in s 6 (of the Enactment) shall be deemed to prevent the leasing of Reservation land by a Malay to a person other than a Malay or by a Siamese to a person other than a Malay or a Siamese for a term not exceeding three years; provided that any document executed prior to or during the continuance of such term which purports to extend the term, whether by renewal of the lease or otherwise, beyond three years shall be void*'.

Diputuskan, menolak rayuan dan mengesahkan keputusan Mahkamah Tinggi:

(1) Perjanjian sewa yang mana adalah untuk tempoh lima tahun bertentangan dengan perkataan-perkataan jelas dan nyata s 9 Enakmen. Transaksi di antara perayu dan responden-responden dilarang dari segi undang-undang. Mahkamah Tinggi tidak tersilap dalam membenarkan perintah perisytiharan bahawa perjanjian sewa tersebut adalah batal (lihat perenggan 5).

(2) Mahkamah Tinggi tidak tersilap dalam mendapati perayu tidak terangkum di dalam definisi 'Melayu' di bawah s 2 Enakmen (lihat perenggan 3).]

Notes

For cases on dealing contrary to Enactment, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3692–3694.

Cases referred to

Robert Lee @ Robert Seet & Anor v Wong Ah Yap & Anor [2007] 4 MLJ 393; [2007] 4 CLJ 1, FC (refd)

Sime Bank Bhd v Projek Kota Langkawi Sdn Bhd [1998] 4 MLJ 334; [1999] 1 CLJ 307, HC (folld)

Legislation referred to

Kedah Malay Reservations Enactment No 63 s 2
Malacca Lands Customary Rights Ordinance (Cap 125) ss 2, 9

Rao Suryana bt Abdul Rahman (Ramli Amar Jit & Tan) for the appellant.
M Thayalan (Thayalan & Associates) for the respondents.

Aziah Ali JCA (delivering judgment of the court):

[1] This is an appeal against the decision of the learned judge of the High Court Alor Setar granting, inter alia, a declaratory order that the tenancy agreement dated 6 July 2004 entered into between the appellant and the respondents in respect of the respondents' land known as Lot 100 Section 4 Mukim Kedawang, Langkawi was void for being in contravention of the Kedah Malay Reservations Enactment No 63 ('the Enactment').

[2] Briefly the facts of this case show that the appellant company as tenant entered into the said tenancy agreement for a period of five years from 1 May 2004 till 30 April 2009 at a monthly rental of RM2,000. The tenancy agreement provided for extensions for a further term of five years and then another ten years (cll 1 and 4 of the agreement). On 16 February 2006 the first respondent issued a notice to the appellant to vacate the said land within one month. The learned judge accepted the evidence of the first respondent that the reason he terminated the tenancy agreement was because subsequent to the execution of the tenancy agreement he realised that the appellant is not a Malay company.

[3] Counsel for the appellant submitted that s 9 of the Enactment does not prohibit the leasing of Malay Reserve Land to a company. The relevant part of s 9 of the Enactment states as follows:

> 9. Nothing in section 6 contained shall be deemed to prevent the leasing of Reservation land by a Malay to a person other than a Malay or by a Siamese to a person other than a Malay or a Siamese for a term not exceeding three years; provided that any document executed prior to or during the continuance of such term which purports to extend the term, whether by renewal of the lease or otherwise, beyond three years shall be void …

Section 2 of the Enactment defines 'Malay' as 'a person professing the Muslim religion and habitually speaking the Malay language of whose parents one at least is a person of Malayan race or of Arab descent'. We found that the learned judge had not erred in finding that the appellant did not fall within the definition of 'Malay' under s 2 of the Enactment. We are in full agreement with Mohd Hishamudin Yunus J (as he then was) in the case of *Sime Bank Bhd v Projek Kota Langkawi Sdn Bhd* [1998] 4 MLJ 334; [1999] 1 CLJ 307 (cited by the learned judge) wherein His Lordship said amongst others that 'On

examining the definition of 'Malay' in s 2 of the Kedah Enactment, it is my view that the definition only refers to natural persons and not to artificial legal persons …'

[4] In the case of *Robert Lee @ Robert Seet & Anor v Wong Ah Yap & Anor* [2007] 4 MLJ 393; [2007] 4 CLJ 1, the Federal Court dealt with the Malacca Lands Customary Rights Ordinance (Cap 125). One of the questions posed to the court was:

> Can the doctrine of fairness be used to override the principles of law and the Ordinance?

Abdul Hamid Mohammad FCJ (as he then was) said, inter alia, as follows:

> The Ordinance and the Malay Reserve Enactments are laws made with a definite objective. No rules of equity (or common law) should be applied that would defeat such objective. Whatmore when the effect is to give effect to a transaction declared to be invalid by the statute.

[5] We agree with the learned judge that the terms of the tenancy agreement which was for a period of five years contravened the clear and unambiguous words of s 9 of the Enactment. We found that the transaction between the appellant and the respondents was a transaction that is prohibited by law. For the reasons stated above we found that the learned judge had not erred in granting the declaratory order that the tenancy agreement was void. The appeal was therefore dismissed and the decision of the High Court was affirmed. However we varied the terms of prayer (c) and ordered that the appellant vacate the respondents' land within three months from the date of our decision. Costs of RM10,000 was awarded to the respondents. The deposit was awarded to the respondents to account for costs.

Appeal dismissed and decision of the High Court affirmed.

Reported by Ashok Kumar